

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR.

S.B. CIVIL WRIT PETITION NO.1236/2001

Hanuman Singh vs. State of Rajasthan and others.

Date : 3.1.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. Manish Shishodia) for the petitioner.

Mr. H.L. Kela)

Mr. L.R. Upadhyaya, for the respondents.

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Heard learned counsel for the parties.

A short question is involved in this writ petition.

Ceiling proceedings were ultimately decided by the Board of Revenue vide order dated 17.2.1998 (Annex.3). The Board of Revenue declared that the assessee is entitled to get 40 standard acres of land and that the assessee has 34 bighas 9 biswas excess land which is required to be acquired under the ceiling law applicable. The petitioner submitted a review petition before the Board of Revenue and submitted that in view of the said order dated 17.2.1998, the petitioner is entitled to hold 40 standard acres of land and according to the petitioner, the remaining land is

falling in small patch land as it will be about 2 standard acres only. Therefore, in view of this fact and in the light of Section 30I of Rajasthan Imposition of Ceiling on Agriculture Holdings Act, 1973 (for short the "Act of 1973"), the petitioner is entitled to keep that remaining land as small patch.

The Board of Revenue decided the review petition vide order dated 3.7.1998 (Annex.5) and observed that if the excess land is only a small patch under Section 30I of the Act of 1973, then the petitioner may apply before the Additional Collector for the relief.

The petitioner submitted an application before the Additional Collector in pursuance of the order of the Board of Revenue dated 3.7.1998 and prayed that no land be acquired from the petitioner as the petitioner was held entitled to keep 40 standard acres and remaining land is only 18 bighas barani II land and if it is converted into barani I, then it will be only 15 bighas, therefore, the alleged excess land is only a strip land and hence, it cannot be acquired in view of Section 30I of the Act of 1973.

The Additional Collector vide order 6.8.1998 (Annex.7) held that since the land was calculated by Board of Revenue in its order dated 7.2.1998 and remaining land is 34.9 bighas whereas the fragment in Ladhun Tehsil is upto 30 bighas of land, therefore,

the Additional Collector rejected the application of the petitioner. Appeal against the said order dated 6.8.1998 by the petitioner was dismissed by the Board of Revenue vide order dated 20.12.2000 (Annex.9). Hence, this writ petition.

According to learned counsel for the petitioner, the Additional Collector as well as the Board of Revenue committed clear error of law as both the courts below failed to appreciate the effect of not only the order dated 3.7.1998 of the Board of Revenue but also failed to take note of Government circular dated 4.2.1964. Two courts below were under impression that since the Board of Revenue in its order dated 17.2.1998 held that the petitioner is entitled to 40 standard acres and also held that 40 standard acres means 353 bighas 7 biswas land and that the excess land is 34 bighas 9 biswas, therefore, the Additional Collector had no jurisdiction to determine how much land will remain after permitting the petitioner to keep 353 bighas 7 biswas.

I have considered the submissions of learned counsel for the parties.

It is true that in the order dated 17.2.1998, the Board of Revenue held that the petitioner can hold 40 standard acres of land and at the same time, observed that 40 standard acres mean 353 bighas 7 biswas.

Therefore, there are two findings, one is petitioner's entitlement of land to the extent of 40 standard acres and another is 40 standard acres means 353 bighas 7 biswas. The petitioner's contention is that the petitioner is ready to surrender excess land, therefore, the ceiling authorities are required to calculate 40 standard acres of land in accordance with law and Rules. It is also a fact that when in an order, there is a mistake of calculation only without affecting the merits of the case, then that can be corrected at any time. There is no dispute that looking to the number of family members, the petitioner is entitled to keep 40 standard acres. The Ceiling Law provides that the land should be converted into standard acres. It appears that different districts have different measurements for bighas, therefore, it has been provided in the Act that the land shall be measured in standard acres.

The circular issued by the Government dated 4.2.1964 makes it clear that the land will be acquired according to measurement of standard acres. By this circular itself, it is clear that different districts have different measurements and soil classes also have a material bearing on the calculation of standard acres under the Rajasthan Tenancy Act, 1955.

In view of the above, the respondents cannot avoid the finding as given in ceiling proceedings by the

Board of Revenue on 17.2.1998. The petitioner is entitled to hold 40 standard acres of land.

As per Section 30I of the Act of 1973, if the remaining land is falling in small strip after calculating the land in standard acres, then the said land cannot be acquired from the petitioner. Two courts below accepted 34 bighas 9 biswas as excess land which was calculated by the Board of Revenue in its order dated 17.2.1998 by assuming that 40 standard acres means 353 bighas 7 biswas. It appears that the question what is the actual measurement of one standard acre in the area where the petitioner's land is situated, was not directly involved when the Board of Revenue decided the petitioner's appeal by order dated 17.2.1998 rather, it may be said that that was not the point very much important for the petitioner because the petitioner was interested in saving his land by showing that he is entitled for 40 standard acres in view of number of his family members. Rest of the thing was matter of calculation only and because of this reason only, it appears that the standard acres have been converted by the Board of Revenue into bighas but without finding out whether the same measurement is applicable to the land of the petitioner as it is falling in the area of Ladnu in District Nagaur.

In view of the above reasons, if the ceiling

authority namely, Additional Collector, Nagaur calculates the land in accordance with the Rules and decides what is the actual measurement of the land which is 40 standard acres in the matter of the petitioner and thereafter, decide what is the exact land in excess than 40 standard acres, by doing so, the ceiling authority is not interfering in the order of the Board of Revenue but making the calculation and quantification of the land in accordance with law in pursuance of the order of the Board of Revenue dated 17.2.1998 wherein it has been held that the petitioner is entitled to hold 40 standard acres of land. By calculating the exact bighas of 40 standard acres land, the ceiling authority will only give effect to the order of the Board of Revenue dated 17.2.1998 which permitted the petitioner to keep 40 standard acres of land and not only 353 bighas and 7 biswas land.

Consequently, this writ petition is allowed and the order of the Board of Revenue dated 20.12.2000 (Annex.9) as well as the order of Additional Collector, Nagaur dated 6.8.1998 (Annex.7) are quashed and set aside. The matter is remanded back to the Additional Collector, Nagaur for deciding the actual measurement of 40 standard acres in the light of relevant provision of the Rules for determination of the standard acres. If the Additional Collector comes to the conclusion that 40 standard acres of land is

more than 353 bighas 7 biswas land, then the petitioner shall be entitled to keep that much of land which is 40 standard acres of land. If after allowing 40 standard acres of the land, the land of the petitioner falls in the small patch in the light of the Rules, relief be granted to the petitioner.

(PRAKASH TATIA), J.

S.Phophaliya